

STATE OF COLORADO

**GENERAL SUPPORT SERVICES
DIVISION OF FINANCE AND PROCUREMENT
OFFICE OF THE STATE CONTROLLER**

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TO: State Controller Contract Delegates
Chief Financial Officers and Controllers
Purchasing Directors

FROM: Arthur L. Barnhart *ALB*
State Controller

DATE: April 14, 2000

SUBJECT: *Executing State Contracts with a Value of No More than \$25,000*

Over the past few years state contracts have become more complex and the contract review workload in the Office of the Attorney General has increased. Because legal resources are limited, it is essential that their use be optimized. In support of this desired outcome, the State Controller's Office (SCO) has issued a new policy concerning the review and approval of state contracts having a value of no more than \$25,000. The policy, *Executing State Contracts with a Value of No More Than \$25,000*, is attached for your information. In essence, the new policy eliminates the required legal sufficiency review for these low dollar/low risk contracts by an attorney in the Office of the Attorney General or a designated Special Assistant Attorney General.

The development of the *Colorado Contract Procedures and Management Manual*, and the training that followed has assisted state agencies and institutions in greatly improving their contracts. By using the Manual, agencies have the expertise and resources necessary to write sound, commercially reasonable contracts with terms and conditions that adequately protect the state. The establishment of a total dollar threshold for contracts, where agencies can determine if a legal review is necessary, is the next logical step in improving the contracting process.

Since state purchasing agents have the authority to issue purchase orders without legal review for acquisitions of most commodities and services up to \$25,000, this was the logical threshold to be established. This new policy essentially eliminates the practical impediments, such as the anticipated delays due to contract routing time and legal review that influenced the choice between a contract and a purchase order. While this policy does not affect procurement rules or privatization review requirements, it should assist in further streamlining the contracting process and make legal services available for more complex transactions and for development of improved contract formats for recurring requirements.

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In order to provide guidelines and assist state agencies and institutions in understanding and implementing this new policy the State Contract Unit in the SCO has developed a contract processing checklist. The SCO Contract Unit will use this checklist when reviewing contracts, which fall under this policy. Each time a contract is executed under this policy, a checklist will be completed and retained with the contract. It is recommended that state agencies and institutions adopt a similar procedure and use this checklist or a modified version of the checklist when executing contracts under this policy.

In order to track the number of contracts executed under this new policy, the SCO has modified the Contract Log Information Table (CLIN) on COFRS in the following manner. The Attorney General Billing Code (AGBC) field on the CLIN screen is a required field and must be completed for each contract. The State Controller's Office has modified the AGBC table in order to allow state agencies to enter a specific code for contracts that do not require a legal review. The code will be NOAG, meaning no attorney general review. Agencies will enter the first four digits of the billing code as they have in the past and then enter "NOAG" for the last four digits of the billing code. This coding should be used for all contracts whether or not they are sent to the SCO for review and approval or retained by the agency and executed by their State Controller delegate. The use of the "NOAG" coding will assist the SCO in processing these contracts correctly and also enable the SCO to track the number of contracts processed under this policy.

Should you have questions concerning this new policy or its requirements, please contact Phil Holtmann in the SCO at 303-866-3809. Thank you.

Attachments

STATE CONTROLLER POLICY

EXECUTING STATE CONTRACTS WITH A VALUE OF NO MORE THAN \$25,000

The requirement to perform a legal review of state contracts, pursuant to State Fiscal Rule 3-1 (1 CCR 101-1) is hereby waived within the thresholds established by and consistent with the limitations contained in this policy.

Background

CRS 24-30-202 (10) designates the Attorney General as the legal advisor to the state controller. The statutes also require that any questions concerning the legality of any obligation or claim be referred to the Attorney General. Historically, State Fiscal Rules have required the Office of the Attorney General or a designated Special Assistant Attorney General to perform a legal sufficiency review on every state contract (contract), regardless of the dollar amount.

Legal Review Thresholds

A legal review by the Office of the Attorney General or designated Special Assistant Attorney General will not be required for the following:

1. Contracts having a value of no more than \$25,000, and construction contracts, utilizing State Buildings Programs forms or other forms approved by the state controller, having a value of no more than \$50,000.
 - A. For multi-year contracts incorporating approved modification formats consistent with the state controller's policy, the highest annual contract/option value or anticipated annual program (grant) contract/renewal value will be used to determine the value for purposes of this policy. Contracts may not have terms exceeding five years. For example, a one-year contract for janitorial services at \$2,000 per month, with four one-year options containing the same terms and conditions, would be within the scope of this policy.
 - B. The specified not-to-exceed ceiling amount will determine the value in task order or indefinite quantity contracts.
2. Amendments to contracts where the total value of the contract (including change orders and renewal letters) remains within the \$25,000 threshold (\$50,000 for construction contracts using State Buildings Programs forms or other forms approved by the state controller).

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State Controller Delegation

State agencies with state controller signature authority can execute contracts without a legal sufficiency review within the scope of this policy. State agencies without delegated state controller signature authority are encouraged to request delegation from the state controller.

Effect on Phase I Waiver Program

The “Phase I” contract waiver program, which permits agencies to apply for waivers relating to a specific contract form, regardless of contract value, is still in effect. The policy clarification in the December 1, 1997 memorandum, *Waivers of Contract Review and Approval*, still applies.

Effect on Phase II Waiver Program

The “Phase II” contract waiver program has been revised. The initial program limit of \$25,000 no longer applies. Agencies may apply and be delegated authority to execute contracts without a legal review in excess of \$25,000. Agencies wishing to participate in the Revised Phase II Contract Waiver Program must submit an application to the SCO in accordance with the December 1, 1997 Phase II Waiver memorandum **and** meet all of the criteria contained in the memorandum.

Office of the Attorney General or Designated Special Assistant Attorney General - Required Legal Review

The Office of the Attorney General or designated Special Assistant Attorney General **must** review each of the following contracts or contract modifications:

1. Any contract, contract amendment, or agreement used to settle a dispute.
2. Any contract involving a disbursement made in violation of CRS 24-30-202(1), which prohibits payments being made prior to the approval of a commitment voucher by the state controller or a delegate.
3. Any contract involving an obligation incurred in violation of CRS 24-30-202(3), which prohibits obligations against the state in excess of or for any expenditure not authorized by appropriation and approved commitment voucher.
4. Any contract that does not have an easily identified annual value or an incrementally funded indefinite delivery contract, or a contract not having a not-to-exceed ceiling amount.
5. Any contract that is multi-year and contains an option or ceiling amount for any year that exceeds or is expected to exceed \$25,000.

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Legal Review of Contracts within the Scope of This Policy

State agencies and institutions still may seek a formal legal review of any individual contract that falls within the legal review waiver thresholds. Legal comments and recommendations will be provided directly to the agency and institution seeking the advice. Where such legal advice is obtained the state controller or the agency/institution delegate will perform the final contract review and approval. If during the review significant deficiencies are noted in a contract, the contract will be forwarded to the state controller with the disapproval recommendation in accordance with existing practice.

The expectation is that legal resources will be used for more complex contracts and requests for proposals, as well as up-front development of improved contract formats on recurring, low-dollar acquisitions. The Office of Attorney General will report to the state controller any instances in which agencies are requesting a legal review of contracts that fall within the thresholds established by and consistent with the limitations of this policy. These agencies will be contacted and, if necessary, provided training to allow them to take advantage of this policy.

Agency/Institution Controller Delegate Responsibilities

CRS 24-30-202(2) requires that the state controller or a delegate examine each contract to insure that it is within legislative intent, that funds are available, that it is fair and reasonable, and that the contract is legally sufficient. To ensure compliance with the above, state controller delegates will approve contracts within the scope of this policy only after they are satisfied, through personal examination or examination by authorized agency staff delegated the responsibility, that:

1. The contract or amendment complies with this policy.
2. The contract includes the Colorado *Special Provisions*. Other than format modifications to the signature blocks, the Special Provisions may not be modified without state controller approval. The term "Not Required" may be inserted in the Attorney General approval signature line in contracts within the scope of this legal review waiver.
3. The contract does not contain a provision requiring the agency/institution to indemnify, hold harmless, or defend contractors, or otherwise include provisions that create potential state liability for personal injury or damage to personal property. Agencies may agree to commercially reasonable limitation of liability provisions consistent with the policy in the state controller/state purchasing director memorandum dated June 26, 1996 and pages 6-27 and 6-28 of the *Colorado Contract Procedures and Management Manual*. Questions concerning allocation of liability provisions shall be referred to the Office of the Attorney General or designated special assistant attorneys general.
4. The contract modification provisions are consistent with the state controller's January 8, 1997 policy memorandum, *Contract Modifications, Changes, Amendments, and Approval Routing*, found in Annex B to the *Colorado Contract Procedures and Management Manual*.

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5. The contract adequately defines the requirement and clearly establishes price/rates and payment provisions that are “fair and reasonable”.
6. The contract attachments and exhibits are properly incorporated by reference and affixed to the contract.
7. The contract is signed by the contractor or an agent of the contractor who has the authority to execute the contract on behalf of the contractor.
8. The contract has been signed by the principal representative or head of the agency or by an authorized delegate.
9. The contract, amendment, or other modification has a signature block for approval by the state controller or delegate.
10. The contract approvals--e.g. Purchasing, State Buildings Programs, Real Estate Services, and the Department of Personnel Privatization Program have been obtained where required.
11. The contract is encumbered and processed in accordance with the *SCO Contract Processing Guide*, including entry on CLIN or individual entry of the vendor name, contract amount, date, and term of the contract in the agency contract log.
12. The contract has been entered on the COFRS CLIN Table or the agency contract log in such a manner that it can be identified as a contract falling within this policy.



Arthur L. Barnhart
State Controller

Questions concerning this policy or any question of a general nature concerning contracting should be directed to the State Contracting Unit in the State Controller's Office. Questions concerning the legal sufficiency of any contract should be directed to the Office of the Attorney General or the designated Special Assistant Attorney General for your state agency or institution.

State Controller's Office

Contract Review and Approval Checklist Executing State Contracts with a Value of No More Than \$25,000

This checklist was developed to document compliance with the State Controller Policy Executing State Contracts with a Value of No More Than \$25,000. Prior to executing any state contract under this policy all items in this checklist shall be completed. This review is necessary to ensure that all contracts executed by the State Controller's Office are in compliance with State Statutes and State Fiscal Rules, contain all necessary and authorized signatures, and protect the state from unnecessary risk. Questions concerning the legal sufficiency of any state contract should be directed to the Office of the Attorney General or the designated Special Assistant Attorney General for the state agency or institution.

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CLIN #: _____ Reviewer: _____ Date: _____

Type of instrument: _____ Encumbrance Amount \$ _____

Review the contract packet to ensure that it is complete and the information provided is correct. Any required items that are missing from the contract must be obtained from the state agency or institution prior to executing the contract. The packet may include any or all of the following. Please indicate all items included in the packet.

1. _____ Copy of the CLIN and/or CLI2
2. _____ Encumbrance document
3. _____ Required approvals
4. _____ Privatization Program Waiver or Certification Form
5. _____ Letter of compliance for contract modifications other than amendments
6. _____ Letter of late justification
7. _____ Letter in accordance with SCO Policy for statutory violation
8. _____ State Fiscal Rule waiver
9. _____ Three complete copies of the instruments to be executed (four copies if a lease)
10. _____ Copy of original contract and all previous amendments for a contract amendment
11. _____ Required contract signatures by authorized individuals

If the answer to any of the following questions is yes, the contract must be forwarded to the Office of the Attorney General or designated Special Assistant Attorney General for review.

1. _____ Is the total value of the contract greater than \$25,000 for any one year?
2. _____ Is the contract for capital construction and greater than \$50,000?
3. _____ Is the contract missing any exhibit or attachment, which has been incorporated in the contract?
4. _____ Does the term of the contract, including all options, exceed 5 years?
5. _____ Does the contract contain any indemnification provisions?
6. _____ Does the contract contain any limitation of liability provisions not consistent with Chapter 6 of the Manual?
7. _____ Does the contract contain any modification provisions that are not consistent with SCO policy?
8. _____ Have the State Special Provisions used in the contract been altered?